IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 180 OF 2001.

1. Mr. Otto Jaime Hamilton
P. de Souza and his wife;

2. Mrs. Diana Rosa V.E. De Souza,
both residing at
Ritinha Apts., Flat G-1,
St. Inez, Panaji, Goa. ..... Petitioners.

Versus

1. Administrative Tribunal,
through its Chairman,
with Office at Coelho Pereira Bldg.,
Dada Vaidya Road, Panaji,
Goa.

2. Addl. Rent Colelctor
and Dy. Collector (Revenue),
Collectorate of North Goa,
Panaji, Goa.

3. Mr. Tulshidas Kondvilkar,
resident of House No.E-26,
Batule, Panaji, Goa
(since deceased) through L.R.

3(a) Mrs. Anusuya Tulsidas Kondvilkar,
residing at H. No. E-26,
Batulem, Panaji, Goa. ... Respondents.

Shri J. E. Coelho Pereira, Senior Advocate with Shri Korgaonkar, Advocate for the Petitioners.

Shri D. P. Bhise, Advocate for the Respondent No.3.

CORAM: J. N. PATEL, J.

DATE: 10th NOVEMBER, 2006.

ORAL JUDGMENT:

Heard the learned counsel for the parties.

2. The petitioner is the landlord who filed an application before the Rent Controller on 6th August, 1998 under Sections 22(2)(c) and 22(2 (g) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 praying for eviction of the respondent/tenant from the suit premises. The respondent, on being noticed, appeared before the Rent Controller and filed his written statement and before the matter could proceed further, a preliminary question was raised as to who should lead evidence in the matter, particularly in the context of Section 21 of the Rent Control Act as in the written statement a plea came to be taken by the respondent/tenant denying the relationship of landlord and tenant between the parties. By Order dated 28th February, 2000 the Rent Controller examined this as a preliminary issue and held that in view of the fact that the respondent/tenant has denied the title of the landlord and claims a right of permanent tenancy by filing a case for registration as a mundkar which came to be rejected by the Mamlatdar as not bonafide. It is the respondent/tenant who should lead his evidence, first in view of his denial of title and claiming to be a mundkar which was found to be not bonafide.

This came to be challenged in appeal by the respondent/tenant before the Administrative Tribunal, Goa by filing Eviction Appeal No..49/2000. The appellate authority by Judgment and Order dated 22.3.01 held that no appeal is tenable against the impugned order and treated the appeal preferred by the tenant as a Revision. After examining the issue in question, quashed and aside the Order dated 28.2.20000 passed by the Addl. Rent Controller and Dy. Collector (Revenue), Collectorate of North Goa which is challenged before this Court.

3. The learned counsel appearing for the petitioner/landlord submitted that the findings recorded by the Rent Controller as well as the appellate authority on the issue as to whether the tenant has denied title of the landlord, have recorded reasons and arrived at a finding in respect of the issue as to whether the tenant having approached the Mamlatdar for being registered as a mundkar which was rejected, amounts to denial of title which would attract section 21 of the Rent Control Act and this would prejudice the case of the parties on merits.

4. The learned counsel for the petitioner/landlord assailed the order of the appellate authority on the ground that the appellate authority failed to take note of the fact which is in dispute that the respondent/tenant did approach the Mamlatdar for being registered as a

mundkar which amounts to denial of title of the landlord, though such an application came to be rejected by the Mamlatdar and therefore in exercise of its revisional jurisdiction the appellate authority ought not to have interfered with the orders passed by the Rent Controller.

5. On going through the orders passed by the Rent Controller and the appellate authority, this Court finds that in order to decide who should lead evidence in the matter, the Rent Controller and the appellate authority have taken into consideration certain admitted facts and have arrived at a decision one way or the other, thereby prejudging the issue merely on the basis of pleadings of the parties in order to decide as to who should lead evidence in the matter.

6. Insofar as the question as to who should lead evidence, it is well settled principle that the burden of proof lies on the person who desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. Though in the present case in the written statement itself, the respondent/tenant has taken a plea in a separate proceedings that he is not a tenant but a mundkar; by itself would not shift the burden on the respondent/tenant to prove the issue as to whether it amounts to denial of the title of landlord without the same being examined on merits. It is not

the case of the respondent/tenant that the petitioner/landlord is not the owner of demised premises but the plea taken by him is of the nature that he is not a tenant, but a mundkar which is by way of defence and therefore in the facts and circumstances of the case the burden of proof would lie on the petitioner/landlord as his application for eviction is on the ground of Sections 22(2)(c) and 22(2)(g) of the Rent Act and due to the stand taken by the respondent in his defence, section 21 may be incidentally attracted.

7. Mr. Coelho Pereira, learned Senior Advocate appearing for the petitioner submits that the petitioner has no grievance if he is required to lead evidence to establish his case for seeking eviction of the tenant under Sections 22(2)(c) and 22(2)(g) of the the Rent Control Act, but then the finding recorded by the Rent Controller as well as the appellate authority may cause prejudice to the case of the petitioner/landlord. It is submitted that the Rent Controller has given a finding in his favour which has been unsettled in revision by the appellate authority.

8. The learned counsel appearing for the respondent/tenant submits that as far as the plea taken by the respondent/tenant is concerned, it is based on certain factual aspects and in no way he has denied the title of the landlord so as to attract the provisions of Section 22 of the Rent Control Act.

9. It can be seen from the order of the Rent Controller and the order passed by the Administrative Tribunal that they have dealt with the issue at length and given their finding which has to be ascertained by the Rent Controller after giving opportunity to the parties to lead evidence and in view of the fact that the petitioner/landlord has approached the Rent Controller for seeking eviction of the respondent/tenant under Sections 22 (2)(c) and 22(2)(g) of the Rent Control Act. It is for the petitioner to prove his case on this ground. No doubt the petitioner can also take this plea available to him under Section 21 of the said Act in view of the pleadings of the respondent/tenant in the written statement for seeking relief.

10. Therefore this Court quash and set aside the finding in respect of the issue as to whether the respondent/tenant has denied the title of the petitioner/landlord or not and this question is kept open for the Rent Controller to decide after the parties lead evidence in the matter. Needless to say that it is the petitioner/landlord will have to lead evidence initially to substantiate his application for eviction under Sections 22(2)(c) and 22(2)(g) of the Rent Control Act.

11. The learned Senior Advocate brought to the notice of this Court that the application was filed by the petitioner/landlord in the year 1998 and therefore this Court may issue directions to the Rent Controller to

expeditiously dispose of the application giving it priority being an old matter for which the respondent/tenant has no objection. Therefore this Court directs the Rent Controller to expeditiously dispose of the application field by the tenant/respondent on merits within the even the learned counsel for the parties assures this Court that they will not seek adjournments and ensure all cooperation so that the matter can be disposed of as expeditiously as possible. It will be highly appreciated if the Rent Controller disposes of the application on merits within a period of one year from the date of communication of the Order.

12. Rule is made absolute in the aforesaid terms with no order as to costs.

J. N. PATEL, J.

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